



EBA BS 2017 076rev1

EBA Staff

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Location: London

EBA Board of Supervisors – Final Minutes

Agenda item 1: Welcome, Approval of Agenda and Minutes

1. The Board of Supervisors (BoS) approved the agenda of the meeting and the minutes of the BoS meeting of 6-7 December 2016. The Chairperson informed of changes to the voting member from the Latvian Financial and Capital Market Commission (Ms Gunta Razāne would replace Mr Pēters Putniņš), the Finnish Financial Supervisory Authority (Mr Jyri Helenius would replace Ms Marja Nykänen as high-level alternate) and the Czech National Bank (departure of Mr David Rozumek, voting member, without a replacement to date).
2. With regard to the UK's expected departure from the EU ('Brexit'), the Chairperson informed that the EBA would hold discussions at BoS-level on the impact of Brexit upon commencement of the negotiations between the EU and the UK. For this, he suggested the setting up of a small team comprising of a few members of the BoS, including the SSM and the ECB, to help prepare such discussions. Furthermore, he informed that the team of the Commission's chief Brexit negotiator had alerted that there would be soon requests for EBA input on risks and areas of supervisory interests.
3. Finally, the Chairperson noted the Commission's intention to launch a public consultation by late March/early April on the review of the ESAs that could look not only at the ESAs funding and the EBA's location, but also at more wide-ranging changes.

Agenda item 2: Election of Members of the Mediation/Breach of Union Law Panel

4. Following a call for expression of interest to fill five vacancies for full Members of the Mediation/Breach of Union Law Panel (the Panel), the Chairperson informed that the EBA had received five applications, notably: Helmut Ettl (Austrian Financial Market Authority); Fernando Vargas (Bank of Spain); Andrzej Reich (Polish Financial Supervision Authority); Pedro Duarte Neves (Bank of Portugal) and Édouard Fernandez-Bollo (French Prudential Supervisory and Resolution Authority). No applications had been received for three alternate positions. He

invited the BoS to appoint these five full Members. The EBA would then launch another call for expression of interest to fill three vacancies for alternates, and invited members from countries not participating in the Banking Union to put forward their candidacies given their limited representation in the Panel.

5. The EBA Head of Legal suggested a discussion at the upcoming BoS meeting of 3-4 May on proposals on how to articulate the representation of resolution authorities in the Panel, noting that these authorities could be reluctant to refer disputes to a Panel where they would not be represented. He said that this matter would be also raised in the context of the Commission's review of the ESAs.

Conclusion

6. The BoS appointed five full members to the Mediation Panel.

Agenda item 3: Update on Risks and Vulnerabilities

7. The EBA Director of Oversight presented an overview of risks and vulnerabilities in the European banking system. He noted, in particular, the increase of CET1 ratios, driven by increasing capital and, especially, decreasing RWA levels. However, profitability continued to be subdued among EU banks. He noted a very modestly decreasing trend in non-performing loans (NPLs) ratios, with significant differences across EU jurisdictions, but noted their resolution remained too low and that without urgent actions, NPLs could act as a significant drag on banks profitability, and on lending into the real economy and general EU economic recovery. He identified the need for action on three fronts: supervisory actions, structural actions to address issues such as slow legal systems, and a functioning secondary market for NPLs, which currently experienced market failures. He presented some corrective actions that could be taken to address the market failures observed. In particular, the establishment of an EU asset management company (AMC) or an EU blueprint for national AMCs. He highlighted the features that such an AMC could have, e.g. banks would transfer irrevocably some agreed segments of their NPLs to the AMC at the real economic value, with full data, and the AMC would set a timeline by which the assets should be sold at the real economic value. There wouldn't be any burden sharing across EU countries, and both BRRD and state aid rules would continue to apply.
8. The Chair of the Standing Committee on Oversight and Practices (SCOP) expanded on the negative effects of NPLs and said that they could not only be felt on banks' profitability, efficiency and funding, but also on the real economy, including the allocation and volume of credit. He held that one of the issues to consider was information asymmetry and NPL valuation, as well as the opportunity cost to maintain NPLs in balance sheets. On the other side, he said that profitability could also be impacted in the short term by the combined effect of addressing NPLs while at the same time dealing with the effects on capital and provisioning of the new IFRS 9 and MREL requirements.

9. Members shared their ideas and views on how to address NPLs, in particular by the establishment of an AMC. Comments in this respect were manifold. One member offered to discuss in detail with the EBA the recent experience in his jurisdiction of the establishment of an AMC under the auspices of the central bank, and further to discussions on transfer price with the Commission's DG Competition services. He said that the effects on the market had been very positive, with decreasing NPLs ratios and increasing market activity.
10. A number of members considered that the establishment of an AMC could go in the right direction of restoring confidence in the EU banking sector. The question of whether an AMC would be willing to take on the risks of a lowering of assets value bought from banks' balance sheets was posed by some members. Some also expressed doubts that the real economic value could be materially different from the current market price. Further investigations should be performed on some aspects, e.g. clawback clause, compliance with BRRD and state aid rules, and the relation between macro and micro aspects of asset supervision. The establishment of an EU AMC or national AMCs was also debated among members, noting the existence of different solvency regimes across the EU, and the political issues that could arise with the establishment of a sole EU AMC.
11. A few members questioned the approach of linking profitability with NPLs ratios, wondering whether addressing NPLs would at all have a positive impact on profitability. In this respect, it was explained that profitability was a broader issue than just NPL, and given the existence of different business models across the EU banking sector, different strategies to address it should be considered.
12. Some members viewed that the issue of precautionary recapitalisation should be studied carefully. The EBA Director of Oversight explained that the concept, as used, was in line with the BRRD rules, and that the approach was to ensure a consistent understanding by market participants.
13. The Commission representative said that the different solutions to deal with NPLs should be discussed at EU-level, and considered that the Financial Services Committee (FSC) could table some solutions at the ECOFIN meeting in May/June 2017. Furthermore, he noted that for each option an assessment of the applicable rules should be performed; in the particular case of the clawback clause, it should be explored further whether the ultimate risks would be borne by the banks themselves or whether the BRRD rules could be compromised.
14. On a different note, the SCOP Chair presented a roadmap for Pillar 2 work agreed at SCOP-level with a view to outlining the planned sequences and steps in the publication of different policy-related products (revision of SREP Guidelines, Guidelines on stress testing, and implementation of the Basel IRRBB standard). The roadmap would include a summary note on Pillar 2 guidance with the elements agreed by the BoS. The final roadmap would be submitted for approval of the BoS by written procedure prior to its publication.

Conclusion

15. The Chairperson thanked members for their comments and ideas. He said that it was fundamental to understand the underlying problem behind the slow pace of decrease of NPLs. The need to clean balance sheets was still present with the constraint that banks had to take action while at the same time comply with the regulatory capital framework. He said that this should be achieved by either forcing banks to recapitalise, or set up an AMC, similar to some jurisdictions.

16. The BoS approved the proposal by SCOP to publish a roadmap for Pillar 2.

Agenda item 4: Supervisory Benchmarking Exercise 2016

17. The EBA Head of Risk Analysis presented the results of the regular supervisory benchmarking exercises for credit risk and market risk, which informed the EBA's work on consistency on risk weighted assets (RWAs) in the EU banking sector. He said that these results had also helped inform the CAs' assessments of internal models. He referred to the delay in the adoption and publication in the Official Journal of the European Union (OJEU) of the amended ITS on benchmarking, which had affected the exercise and in particular, the quality of the data submitted by the participating institutions. On the use of benchmarks, the EBA Director of Oversight said that he would like to understand their use by supervisory colleges, for which the involvement of the relevant team would be sought.

18. Members welcomed the reports and broadly agreed with the main results, but raised some issues for consideration before their publication. In particular, some members cautioned on the assessment methodology used and the quality of the data and invited to add some caveats in the executive summary reflecting these concerns. In general, the executive summary of the report seemed to be drawing overly optimistic conclusions.

19. There was agreement on the question of the feedback to provide to banks in terms of descriptive statistics of risk parameters and granularity. It was requested to involve the Task Force on Supervisory Benchmarking (TFSB) to conduct a final check before the sharing of such information, which would anyway be transmitted to banks via the CAs.

20. A few members considered that the 'global charge' was a difficult metric to interpret and that further explanations should be included in the credit risk report. EBA staff noted however that the global charge allowed for a comparison of banks using IRB models vs the Standardised approach, including the loss component, and that the report provided all the relevant methodological explanations.

21. A final comment referred to the lack of cover of all levels of consolidation. EBA staff confirmed that, consistently with a previous BoS decision, the analysis was based on the highest level of consolidation, but that CAs were required to run the assessment of internal models for all banks.

Conclusion

22. The BoS agreed to the publication of both reports with a few amendments in the executive summary. It also agreed to provide information of the statistical distribution of risk parameters to participating banks, with a fatal flaw review by the TFSB before such sharing.

Agenda item 5: 2018 EU-wide Stress Tests

23. The Chairperson reminded of the conclusion at the December 2016 meeting, where the BoS agreed with the 'status-quo option' with a tentative publication in the first half of 2018 subject to a later discussion on the reliability of starting point data considering IFRS 9 adoption. The Stress Test Task Force (STTF) had been looking into it, and concluded that it was reasonable to expect that institutions, especially large ones participating in the EU-wide stress test, should be able to provide starting point (end-2017) numbers, restated on an IFRS 9 basis as at 1 January 2018 of sufficient reliability for the launch of the EU-wide stress test publication in the first half of 2018. In light of this, the STTF had in principle suggested to stick to the timeline agreed, but with flexibility on the publication date between June and July 2018, as suggested by the SSM. Members were asked both for their views on this aspect and when participating banks should be informed of this timeline.

24. Members broadly agreed with the proposal. On the communication of the timeline to participating institutions, a majority of members agreed that it would be ideal to communicate it as soon as possible, especially the start of the exercise, although others opined that it should be flagged as tentative, noting the existence of certain uncertainties, e.g. with data quality. One member pointed out that it is very important that banks are timely informed about all relevant requirements based on IFRS9 in the context of the upcoming stress testing exercise.

25. With regard to the submission of starting point (end-2017) numbers, restated on an IFRS 9 basis as at 1 January 2018, members agreed with the STTF's views. But some concerns were expressed on the impact that the transitional period for the application of IFRS 9 could have on the submission of such data, and the ability of CAs to perform their quality assurance checks.

Conclusion

26. The BoS agreed with the timeline, with publication of the results in June/July 2018, and a communication to institutions as 'tentative' after the BoS meeting, noting also the inclusion of data restated on an IFRS 9 basis.

Agenda item 6: Draft EBA Opinion on Improving the Decision-making Framework for Reporting Requirements

27. The EBA Head of Legal presented a draft Opinion suggesting changes to the CRR and to the EBA founding regulation whereby the EBA would adopt directly supervisory reporting requirements, in particular the reporting templates. He explained the issues that the current

delays in the adoption and publication of such templates were causing to both CAs and credit institutions. He outlined that the draft Opinion included a strengthening of the accountability mechanisms, amongst other, to ensure stakeholder input and streamlined scrutiny rights of the Commission. He also informed the BoS of the outcome of the discussions at the MB meeting of 24 January 2017 on the draft Opinion.

28. Members supported the draft Opinion, viewing that it would help address the concerns they had been raising for some time. They raised some comments on, inter alia, the need for further interaction with the Commission services to ensure a smooth legal construction of the delegation to the EBA, and the possibility of extending the scope of the Opinion to the reporting of resolution matters. Other members asked for more time to discuss the draft Opinion, including at the technical level.

29. The Commission representative acknowledged the concerns with the current system of adoption and publication of reporting templates; however, he said that such a delegation should be clearly framed in the level-1 text, and that a power to adopt decisions of general application should ideally be foreseen in the EBA founding Regulation, and invited the EBA to raise the issue in the context of the consultation on the review of the ESAs.

Conclusion

30. The BoS adopted the Opinion on improving the decision-making framework for supervisory reporting requirements in Regulation (EU) No 575/2013 with amendments to include the reporting of resolution matters.

Agenda item 7: Process Note in view of EBA Opinion on Proposals on CRR/CRD/BRRD

31. The Chairperson explained that the MB had discussed the way forward regarding the proposed amendments of CRR, CRD and BRRD, and it had suggested that the EBA should prepare a formal Opinion for policy topics touching upon key EBA responsibilities, and on which the EBA had not yet communicated its stance, e.g. supervisory reporting, IFRS 9 and its interface with prudential requirements; for other topics, the MB viewed that the EBA should merely restate, in the form of a letter or else, its stances as publicly communicated. He then asked the BoS for views on both topics to address and the form of communication to the EU legislators. On the former, the EBA Director of Regulation added that proportionality could be a topic given its impact on the overall regulatory framework. Market risk, for which 15 different regulatory products should be delivered, could be first approached in a discussion paper, which would help trigger a public discussion with external stakeholders.

32. Some members preferred an opinion on the full CRR/CRD/BRRD review (including also topics where EBA has already communicated its stance). Members agreed with both the general direction as presented by the Chairperson and the topics to cover in a formal Opinion, noting that the EBA should be rather ambitious and focus on areas that add value to the legislative

amendments. Members considered that the issue of proportionality should be well addressed, in particular the frequency of reporting and minimum requirements for smaller institutions. A discussion then ensued during which members suggested other topics, such as own funds and CET1 instruments, intermediate financial holding companies structures requirements, supervision of systemically relevant investment firms, Pillar 2, leverage ratio. One member noted that resolution topics should also be included in this exercise.

33. Other members asked for a greater role of the EBA standing committees in this exercise.

Conclusion

34. The Chairperson welcomed the exchange of views by members and their broad support for the whole approach with some additions. There was agreement to address IFRS 9 and its interface with prudential requirements, reporting delegation, proportionality including frequency of reporting, own funds, intermediate holding companies in formal EBA Opinions. He noted that the Standing Committee on Regulation and Policy (SCRePol) would be involved in identifying other topics that could be addressed by the EBA in its contacts with the EU legislators.

Agenda item 8: Follow-up to IFRS 9 Issues

35. The Chairperson presented the work conducted on the interactions of IFRS 9 with prudential requirements, taking into account the proposals to amend the CRR and the discussions on some transitional arrangements for the introduction of IFRS 9, due for annual financial reporting periods beginning on or after 01 January 2018. The EBA Head of Capital, Accounting and Liquidity Management presented a draft Opinion, addressed to EU legislators, covering policy options on the transitional arrangements (which included the application of a 'static' or a 'dynamic' approach, and the classification of provisions for credit risk under IFRS 9 as specific or general. She also invited members to share their views on the main elements of the proposed EBA guidelines on expected credit losses (ECL), which were part of the IFRS 9 work.

36. Members expressed their views on the different elements of the draft Opinion. There was a majority in favour of the static approach for transitional arrangements given in particular its simplicity, although a few members considered that a dynamic approach appeared more appropriate for various reasons, amongst others, the fact that a static approach may not capture the impact over the whole transitional period.

37. Members also discussed other aspects of the draft Opinion, e.g. the elements of IFRS 9 impact within the scope of application of transitional arrangements, the duration of the transitional arrangements and whether their application should be mandatory or left to each institution's decision.

38. While members agreed that the impairment requirements would have the most impact, a few members mentioned that the other requirements of IFRS 9 (classification and measurement) should also be included in the scope of transitional arrangements. A vast majority of members agreed with the proposed phased-in transitional period of four years, starting with a 20%

impact of all IFRS 9 requirements in 2018, with no neutralisation. In addition, the majority agreed with the proposed mandatory application of transitional arrangements by institutions while giving the option to institutions to recognise if they so wish, the full impact of IFRS 9 on own funds on 1 January 2018.

39. Finally, there was a general agreement on considering that for institutions applying the standardised approach for measuring capital requirements for credit risk, all IFRS 9 provisions should be considered as specific credit risk adjustments (rather than general).

40. On the Guidelines on ECL, members agreed with the approach taken by SCARA to finalise the guidelines and the changes in the proportionality approach.

Conclusion

41. The BoS adopted the Opinion.

Agenda item 9: Report on the State-of-Play of Basel III implementation in 2017

42. The Chair of the Task Force on Impact Studies gave a presentation on the results of the CRDIV–CRR/Basel III monitoring exercise as of June 2016. He noted that they were not yet the final results but expected to finalise them including any final comments by the BoS; subsequently, they would be published concurrently with the Basel report. He informed the BoS of the current plans on the CRDIV–CRR monitoring exercise as of 31 December 2016. He said that the exercise would not include the pending policy reforms, i.e. credit risk, CVA and output floor, but would include additional European data collections such as MREL, LCR and LR. The BoS would be given the opportunity to comment and approve the report by early August 2017 such that it could be published by early September.

43. Members welcomed the report. One comment was made on whether the adjustment process of capital requirements observed across credit institutions was consistent between this and other EBA reports. It was said that the size of the sample could well justify the possible divergences, and that it would be necessary to be clear on this point in any communications material.

44. In response to a question on the state of play of the negotiations of the Basel III reform package, the Chairperson noted that there would be a meeting in early March and that the appointment of new senior leaders to US agencies represented in the BCBS could shed more light on the negotiation progress.

Conclusion

45. The report would be submitted for approval of the BoS by written procedure, and published on 28 February.

Agenda item 10: RESTRICTED SESSION

46. The BoS held a restricted session under agenda item 10.

Agenda item 11: Annual Report on Functioning of Colleges

47. The EBA Head of Supervisory Convergence presented the 2016 report on the functioning of colleges, which provided an overview of the EBA monitoring of EEA colleges as well as the EBA staff findings and performance based on the 2016 Colleges Action Plan, approved by the BoS.

Conclusion

48. The BoS approved the annual report and agreed to its publication together with the 2017 Colleges Action Plan.

Agenda item 12: Benchmarking Report of Recovery Plans' Options

49. The EBA Head of Supervisory Convergence introduced the fourth comparative analysis report on recovery plans across the EU, focusing on recovery options. She explained the challenges identified, namely the recovery options' links with scenarios and governance and the financial and operational impact assessment, which might hamper their feasibility and credibility.

Conclusion

50. The BoS approved the report and agreed to its publication.

Agenda item 13: Consultation Paper on EBA Recommendation on Coverage of Entities in Group Recovery Plans

51. The EBA Director of Oversight introduced a consultation paper on an EBA recommendation setting out a common supervisory approach with regard to the identification and appropriate coverage of entities in group recovery plans, aimed, amongst other things, at addressing possible information gaps from host supervisors of entities under such plans. He said that the recommendation relied very much on proportionality by clarifying that not all entities may be required to submit the same level of detailed information. Furthermore, the recommendation would also envisage a transition phase of two years for the migration of recovery planning information already available from the local entity-level to the group level; it was also clarified that requesting the individual plans in the context of the joint decision process for reasons other than the coverage of entities in the group recovery plan would not be affected by these recommendations.

52. A majority of members supported the draft recommendation, and viewed that it represented a good balancing exercise between different interests and that it helped achieve financial stability by means of an internally consistent recovery process.

53. Comments by members referred to various matters. Concerns were expressed regarding the role of supervisors of subsidiaries given their absence during the preparation of the group recovery plans, the approval of which would rest with the home supervisor. These concerns extended to the role of host supervisors in protecting financial stability in the case of locally relevant entities, and a few members supported that individual plans should continue being requested from subsidiaries. They also agreed that more information from subsidiaries should be included, e.g. as a means to improve risk management within a group. Along the same lines, another member opined that the recommendation should address the situation where a parent institution in distress could not provide support to a subsidiary.
54. Other members considered that a shorter transition period should be foreseen, such that a broader coverage of entities in a group recovery plan could be achieved before end-2019.
55. The Commission representative expressed his concerns with the inclusion of a transition period not provided for in the BRRD. He also said that Article 6 of the BRRD provided for the involvement of CAs where the assessment of recovery plans would not be satisfactory. To this extent, he advised that the recommendation should be consistent with BRRD provisions.

Conclusion:

56. The BoS agreed to the publication of the consultation paper. The issue of the level and width of coverage for entities identified as locally relevant would be looked at more closely during the consultation phase, as well as how address the situation where a parent institution in distress could not provide support to a subsidiary. It was agreed to consider a transition phase until 2019 and to conduct a review of the whole situation such that it could be revisited if necessary.

Agenda item 14: Progress Update of TFPS tasks and EBA Opinion on the Final RTS on the Separation of Card Schemes and Processing Entities under the Interchange Fee Regulation

57. The EBA Head of Consumer Protection, Financial Innovation and Payments updated the BoS on the progress of deliverables under the Interchange Fee Regulation and the Revised Payment Service Directive.
58. EBA staff presented a draft Opinion in response to the Commission's suggested amendments on the RTS specifying the requirements with which payment card schemes and processing entities should comply to ensure the independence of their accounting, organisation, and decision-making processes. She explained the Commission's amendments and the EBA's view of them as expressed in the draft Opinion.
59. A majority of members supported the EBA's draft Opinion and agreed to its endorsement. The Commission representative opined that some of the amendments in the Draft Opinion run

counter the ‘full independence’ that should be observed between payment card schemes and processing entities.

Conclusion

60.The BoS adopted the EBA Opinion, which would be published and submitted to the Commission.

Agenda item 15: Final Draft RTS on Strong Authentication and Communication under PSD2

61.The Chairperson introduced the final draft RTS, developed in close cooperation with the ECB, reminding the BoS of the long and in-depth discussions with industry (both banks and third party providers - TPPs) and European institutions. He noted that a fine balancing of different conflicting interests had been found in the final text submitted for BoS approval. The consultation phase had triggered a large number of comments, many of which had been considered in the revised text. EBA staff presented the technical elements of the RTS and explained how some of the most relevant issues had been addressed. In particular, she noted the introduction of a new exemption based on transaction-risk analysis, while acknowledging the current weakness due to patchy data, and the additional requirements laid out for account servicing payment service providers to ensure TPPs have access to the data they need to service their customers and fairly compete in the market.

62.Many members viewed the final text as a good compromise; they acknowledged the difficulties to address the many interests at stake, and supported it. Some asked for a final round of comments before their endorsement in light of the last minute changes introduced in the RTS as well as the introduction of a review clause.

63.Some members expressed concerns with some of the elements included in the RTS, namely, the increased monetary threshold for the low value exemption for remote payments from EUR 10 to EUR 30; the method used in the new transaction-risk analysis exemption, arguing against the lack of sufficient data to back this exemption. The Commission representative conveyed the position of the Commission, including their agreement with the exemptions provided a review clause would be introduced, and their preference for the inclusion of a ‘true’ fallback option for TPPs.

64.The Chairperson, in reaction to some of the comments, noted that the EBA could consider own-initiative Guidelines to determine the methodologies to calculate fraud rates. He also noted that, as an exception, and in light of the specificities of this particular RTS, a review clause could be added.

Conclusion

65.The BoS approved the RTS. The RTS would be submitted to the BoS for an editorial review to ensure consistency of the text before its submission to the Commission and subsequent

publication. In respect of the new exemption based on transaction risk analysis, a review clause 18 months after adoption of the RTS was also agreed.

Agenda item 16: Consultation Paper on Guidelines on Complaint Procedures

66.EBA staff introduced a consultation paper on guidelines addressed to CAs on the complaints procedures regarding alleged infringements of the PSD2, to ensure payment service providers (PSPs) comply with the provisions of the PSD2.

67.A few comments by members referred to the amount of information that CAs should provide to complainants (as outlined in guidelines 3.1c)) and, in general, to the possibility of strengthening the complaint procedure by setting out a higher level of detail.

Conclusion

68.The BoS endorsed the consultation paper for publication, and committed to consider the comments by members during the consultation phase.

Agenda item 17: EBA Mandate on Financial Literacy and Education under Article 9 EBA Regulation

69.The Chairperson explained that, under the EBA founding Regulation, the EBA had a mandate to review and coordinate financial literacy and education initiatives by CAs. After discussions spanning several years on how to deliver this mandate, it had been agreed to set up a repository of financial literacy and education initiatives within the EBA's scope of action, and developed by CAs at national level. This repository would be for internal use initially but a discussion and decision at a later stage would be made on whether to make it available to other authorities and/or to the public.

Conclusion

70.The BoS welcomed this initiative.

Agenda item 18: Follow-up to Survey on Panama Papers

71.The Chairperson referred to the survey conducted among CAs as a follow up to the *Panama papers*. He said that 21 CAs had taken action, the analysis of which had in turn raised questions in terms of the consistency and effectiveness of their supervisory actions, their coordination, and the links between anti-money laundering/combatting the financing of terrorism (AML/CFT) and internal governance systems and controls, and tax crimes. He asked members for the message that the EBA could convey to the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA).

72. Members discussed supervisors' responsibilities in relation to tax crimes, the link between prudential, conduct of business and AML/CFT supervision and their ability to cooperate in relation to non-prudential matters. Some considered that the responsibility for tax crimes sat with tax authorities. In their view, supervisors' interest in the Panama Papers was restricted to testing whether banks had systems and controls in place to comply with their AML/CFT obligations. Cooperation with other CAs was limited as the legal framework was not conducive to the exchange of information among non-prudential authorities.
73. Others were clear that while supervisors were not responsible for investigating tax crimes, they nevertheless were responsible for ensuring that banks had systems and controls in place to manage the risk that they may be used for ML/TF purposes, including the laundering of the proceeds from tax crime, and the risk of their staff failing to conduct the bank's business with integrity, including by facilitating aggressive, and possibly illicit, tax planning. A more holistic approach was needed that better combined the prudential and business conduct areas, not least because conduct risks, once crystallised, had prudential repercussions.
74. Several members commented that existing cooperation arrangements were focusing on prudential aspects only. This created problems where cooperation was sought in other areas. While legal obstacles to supervisory cooperation would be addressed through proposed changes to the AMLD, these were unlikely, by themselves, to foster greater collaboration. The EBA could have a role to play in putting this into action, including, where necessary, through the colleges framework.
75. The Commission representative noted that the ESAs joint RTS on the measures that credit and financial institutions should be required to take to manage the risk of money laundering and terrorist financing where they have branches or majority-owned subsidiaries in third countries that prohibit the implementation of anti-money laundering and counter-terrorist financing measures consistent with those required by Directive (EU) 2015/849 would help put in place additional measures. He asked whether it would be possible to know the resources devoted by CAs to AMLD/CFT activities.

Conclusion

76. The Chairperson noted the differences across jurisdictions. With a view to conveying to the PANA Committee the work that CAs were carrying out, he suggested that EBA staff would liaise with several CAs to better understand the reach of their actions and to identify what the EBA could do further.

Agenda item 19: Issues Note on Q&A 1628 – Eligibility of Collateral of Securitisation Positions issued by an SSPE belonging to the Same Group

77. The EBA Director of Regulation explained the state of play of a Q&A on whether securitisation positions could be used in the credit risk mitigation (CRM) framework when the securitisation

would be issued by a special purpose entity within the same group. This raised some complex issues given the lack of criteria in the CRR to define ‘related group’, and in particular when trying to address the question of whether a bankruptcy-remote Securitisation Special Purpose Entities (SSPE) would be related. The suggested answer took the view that it would not be impossible that securities issued by a SSPE that would be part of the group of the obligor used by this latter could, from a prudential perspective, be eligible as financial collateral provided there was no positive correlation of the underlying credit risk. She asked the BoS whether it could agree with this approach. She also queried BoS whether it could agree that, for SSPE not to be considered as related entities in accordance with Article 207(2) CRR, the SSPE should, at least, meet a number of conditions on an ongoing basis.

78. Members generally agreed with the economic substance approach noting that caution should be exercised via an ad-hoc analysis taking care of the bankruptcy remoteness. Some members noted that there was indeed an issue with the level-1 text and considered that clarity on the definition of related entity should be brought in the CRR. The EBA Director of Regulation said that indeed it would be ideal to clarify this in the CRR but only provided that the matter had been settled and the approach agreed.

79. Other members disagreed with the approach proposed, and questioned, amongst other reasons, that securities should be accepted as collateral where the issuer had gone bankrupt. Others said that it did not seem a good idea to allow entities within a group to offer securities.

Conclusion

80. The BoS agreed to remove any ambiguity from the final text of the Q&A answer, ensuring that it reflected the economic substance approach provided that there would not be correlation with the obligor. The Q&A answer should include only high level criteria for SSPEs not to be considered as related entities. With these changes, the Q&A would be submitted for approval of the BoS by written procedure.

Agenda item 20: Issues Note on Consultations/Notifications on Risk Weights and LGD Floors for Immovable Property

81. The Chairperson presented a note setting out a process for consultations and notifications on risk weights and LGD floors for immovable property under Articles 124 and 164 of the CRR. The note presented both a way to deal with existing notifications and consultations and for future submissions. He said that the need to establish such a process was justified by the lack of RTS on risk weights and loss given default (LGD) for immovable property. It was explained that the idea was to design a rather simple process for such notifications and consultations. Each new notification and consultation would be dealt with by the EBA’s Task Force on Macroprudential Matters (TFMM), and would be escalated to BoS upon further consideration by the SCOP Chair and EBA staff based on the comments received. Their results would be used for regular EBA reports on the range of practices of macroprudential matters. The process would be reviewed

further to the adoption of the RTS and the Commission's review of the macroprudential framework of CRR/CRD.

82. One member questioned how the EBA would deal with the notifications and consultations in the absence of criteria due to the lack of RTS. The Chairperson explained that they would be handled at technical level and only those of a more controversial nature would be escalated at the BoS. He clarified that 'controversial nature' should not be understood as possible cases of breach of law, for which a different process (breach of Union law investigation) would be applicable. He insisted that although acknowledging the lack of RTS, still there was an obligation imposed by the CRR to deal with such notifications and consultations, and the process proposed by the EBA intended to address such obligation.
83. Other comments raised referred to the appropriateness of dealing with such submissions from a macroprudential perspective rather than a microprudential one, with the suggestion that such issues should be addressed by the Sub-group on Credit Risk, rather than the TFMM.

Conclusion

84. The BoS agreed with the EBA staff's proposal for both existing and future notifications and consultations.

Agenda item 21: Consultation Paper on RTS on the Specification of the Nature, Severity and Duration of an Economic Downturn

85. The EBA Head of Credit, Market and Operational Risk Policy presented the consultation paper on RTS on the specification of the nature, severity and duration of an economic downturn. He explained the main elements of the RTS; he noted that, at the request of the BoS at the December 2016 meeting, two other simpler alternatives had been included in the consultation paper, namely the 'reference value approach' and the 'supervisory add-on approach'.
86. A discussion followed on the inclusion of section 5 on simpler alternative approaches. There was general agreement among members, despite different preferences among the approaches, to include such section with a view to allowing the EBA to seek further input from industry.
87. A majority of members expressed a preference for the 'reference value approach'; but some members also viewed that the simpler approaches could raise issues of legal compliance with the level 1 text, although they agreed that this could be addressed later on during the process. In this regard, the BoS also discussed how to present the simpler alternative approaches. Some members supported the current drafting of section 5, but a majority stated that they'd rather see reflected the preference expressed for the 'reference value approach'.

Conclusion

88. The BoS agreed to the publication of the consultation paper, and was invited to submit proposals to EBA staff on the drafting of section 5 reflecting the BoS preference for the 'reference value approach' as well as a disclaimer clarifying that the exact implementation of the proposed simpler alternatives should be evaluated in terms of legal feasibility.

Agenda item 22: Reports from Standing Committees

89. The BoS took note of the reports from Standing Committees.

Agenda item 23: AoB

- Request for Regulatory Forbearance with respect to the 1 March 2017 Compliance Date for Regulatory Variation Margin Requirements

97. The Chairperson informed of an industry request for a further delay in complying with variation margin requirements, the deadline for which would be 01 March. The US has granted a suspension of application for 6 months. He had discussed the matter with ESMA and EIOPA, who had agreed to a joint stance on the request. This stance stated that neither the ESAs nor CAs could disapply directly applicable EU law, and that any further delays in the application of the EU rules would have to be implemented through EU legislation, a lengthy process which in light of the upcoming deadline did not appear feasible. But it also highlighted that CAs could conduct a case-by-case assessment of the degree of compliance and progress by applying their risk-based supervisory powers, whereby counterparties could document the steps taken towards compliance while putting in place alternative arrangements to address the risk of non-compliance.

98. It was agreed that there was no room for forbearance, and viewed that the proposed joint stance was a good approach.

99. The BoS agreed that the EBA should liaise with ESMA and EIOPA to agree on some common communication lines, which would be shared with members before publication.

- FINTECH

100. The alternate Chairperson briefed the BoS on the progress made on FinTech work under the EBA broad mandate. A mapping exercise would soon be launched with a view to performing an assessment of types of services offered by FinTech companies, authorisation, ownership arrangements, etc. He noted that other EBA technical workstreams would be involved in this exercise, and invited all CAs to also participate.

END OF MEETING

Andrea Enria

Chairperson

Participants at the Board of Supervisors' meeting

14-15 February 2017, London

Chairperson: Andrea Enria

<u>Country</u>	<u>Voting Member/Alternate</u> ¹	<u>Representative NCB</u>
1. Austria	Helmut Ettl	Philip Reading
2. Belgium	Jo Swyngedouw/David Guillaume	
3. Bulgaria	Dimitar Kostov	
4. Croatia	Damir Odak	
5. Cyprus	Stelios Georgakis	
6. Czech Republic	Zuzana Silberová	
7. Denmark	Jesper Berg	Niels Bartholdy
8. Estonia	Andres Kurgpõld	Indrek Saapar
9. Finland	Jyri Helenius	Jouni Timonen
10. France	E. Fernandez-Bollo/Frédéric Visnovsky	
11. Germany	Peter Lutz	Erich Loeper
12. Greece	Spyridoula Papagiannidou	
13. Hungary	Csaba Kandrács	
14. Ireland	Cyril Roux/Gerry Cross	
15. Italy	Andrea Pilati	
16. Latvia	Gunta Razāne/L. Vojevoda	Vita Pilsuma
17. Lithuania	Vytautas Valvonis	
18. Luxembourg	Martine Wagner	Norbert Goffinet
19. Malta	Ray Vella	Alexander Demarco
20. Netherlands	Jan Sijbrand/Olaf Sleijpen	
21. Poland	Andrzej Reich	Maciej Brzozowski
22. Portugal	Pedro Duarte Neves/José Rosas	
23. Romania	- ²	
24. Slovakia	Tatiana Dubinová	
25. Slovenia	Damjana Iglic	
26. Spain	Fernando Vargas/Cristina Iglesias-Sarria	
27. Sweden	Uldis Cerps	Olof Sandstedt
28. UK	Sam Woods/Sasha Mills	Nigel Fray

¹ Accompanying experts: Ingeborg Stuhlbacher (Austrian Finanzmarktaufsicht); Dries Cool (National Bank of Belgium); Marek Sokol (Czech National Bank); Julia Blunck (BaFin); Constantinos Botopoulos (Bank of Greece); Maurizio Trapanese and Domenico Gammaldi (Banca d'Italia); Joost Passenier (De Nederlandsche Bank); Jakub Zakrzewski (Polish Financial Supervisory Authority); Richard Spooner (Bank of England)

² Represented by Lucretia Paunescu

<u>Country</u>	<u>Member</u>	<u>Representative NCB</u>
1. Iceland	Sigurdur Freyr Jonatansson	-
2. Liechtenstein	Heinz Konzett	
3. Norway	- ³	Sindre Weme

<u>Observer</u>	<u>Representative</u>
1. SRB	Dominique Laboureix

<u>Other Non-voting Members</u>	<u>Representative</u>
1. SSM	François-Louis Michaud ⁴
2. European Commission	Dominique Thienpont ⁵
3. EIOPA	- ⁶
4. ESMA	- ⁷
5. ESRB	- ⁸
6. EFTA Surveillance Authority	Frank Buechel/Per Christian Baeroe

EBA Staff

Executive Director	Adam Farkas
Director of Oversight	Piers Haben
Director of Regulation	Isabelle Vaillant

Mario Quagliariello, Slavka Eley, Delphine Reymondon, Lars Overby, Jonathan Overett Somnier, Dirk Haubrich, Philippe Allard, Helene Oger-Zaher, Rita Bairros, Santiago Barón Escámez

³ Represented by Per Jostein Brekke

⁴ Accompanied by Sergio Nicoletti Altimari and Pierre Petit (ECB)

⁵ Accompanied by Valeria Miceli

⁶ Represented by Kai Kosik

⁷ Represented by Joe Heavey

⁸ Represented by Tuomas Peltonen